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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,306	12/16/2003	Robert Haines Turner	9134R2	5964

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EXAMINER
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BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
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1771

MAIL DATE	DELIVERY MODE
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07/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/737,306	TURNER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Jenna-Leigh Befumo	1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 April 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 11-16 is/are allowed.
- 6) Claim(s) 1-10 and 17-27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 1/07.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

1. The response filed on April 26, 2007 has been entered. Claims 1 – 27 are pending.
2. The 35 USC 112 rejections are withdrawn due to the applicant's arguments (response, pages 2 – 3). It is noted that the discontinuities and deformations, based on the definitions can be described by the same feature, since the discontinuity can or cannot include fibers.

***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1 – 5, 8 – 10, 17 – 21, and 23 – 26 stand rejected under 35 U.S.C. 102(b) as being anticipated by Provost (2004/0157036) for the reasons of record.
5. Claims 1 – 6, 8, 10, and 17 – 27 stand rejected under 35 U.S.C. 102(b) as being anticipated by Sorimachi et al. (5,508,080) for the reasons of record.
6. Claims 1 – 3, 9, 10, 17 – 21, and 24 – 26 stand rejected under 35 U.S.C. 102(b) as being anticipated by Hansson (6,048,600) for the reasons record.

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Claim 7 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Sorimachi et al. in view of Kotek et al. (6,120,718) for the reasons of record.
9. Claims 4 – 8, 22, and 23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hansson for the reasons of record.

***Double Patenting***

10. Claims 1 – 27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 3 – 15 of copending Application No. 10/737,235 for the reasons of record.

Art Unit: 1771

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claims 1 – 27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 20 of copending Application No. 10/737,430 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

12. Claims 1 – 27 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 21 of U.S. patent 7,172,801 (formerly Application No. 10/737,307) for the reasons of record.

US Application 10/737,307 been allowed and is now patent No. 7,172,801. Thus, the rejection has been changed to reflect the most recent status of the application and is no longer a provisional rejection.

13. Claims 1 – 27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 44 of copending Application No. 10/737,640 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

14. Claims 1 – 27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 25 of copending Application No. 11/156,020 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Response to Arguments***

Art Unit: 1771

15. Applicant's arguments filed April 26, 2007 have been fully considered but they are not persuasive. The applicant argues that Provost is not sufficient to teach the claimed invention because Provost is combining two materials together and does not teach a single layer. However, the claim does not exclude additional layers since it recites "comprising language". Therefore, the prior art can be made with multiple layers and doesn't need to teach a single layer fabric.

The applicant argues that Provost fails to teach a tuft with a linear orientation defining a longitudinal axis in the MD-CD plane because Provost uses circular needle which produce rounds holes (response, pages 4 – 5). The applicant further details to size of the needle and depth of the needles taught by Provost. The applicant is relying on the phrase "tufts having a linear orientation defining a longitudinal axis in said MD-CD plane" to require some specific shape or size to the tufts. Thus, the applicant is trying to describe the tufts by imaginary lines which can be mapped over the shape of the tuft. Therefore, if a straight line can be mapped over the circular tufts of Provost, the line would create a linear orientation. Further, that line would create an axis, which can be interpreted as the longitudinal axis, since the longitudinal direction or axis is a relative term. Whether or not a figure is symmetric does not exclude the figure from being mapped with a linear orientation or a longitudinal axis. Linear orientation is not defined by whether or not a line mapped over a shape is longer in one direction than the other. The claimed linear orientation is given weight as meaning a line can be mapped over the shape in any direction regardless of the length of the other directions. The claim does not exclude circular shapes, and therefore, the applicant's arguments are not commensurate in scope with the claim language.

Further, the applicant requires that the discontinuity and deformation must be two different components. However, needle punching would not produced a flat even surface on the bottom surface which has been needle punched. Thus, the composite when viewed from the bottom will produce a discontinuity and when viewed from the top a tuft, which qualifies as the deformation. Further, as defined by the applicant, the components do not exclude one feature from being both a discontinuity and a

Art Unit: 1771

deformation. The tuft created by the needling process has both a discontinuity and a deformation. Thus, the rejections based on Provost are maintained.

Finally, it is noted that the applicant's arguments with regards to the loops 40 of Provost not exhibiting a linear orientation as claimed, is unclear since the claims recite that the discontinuity has the linear orientation and not the loops (response, page 7). Thus, the arguments are not commensurate in scope with the claims.

16. The applicant argues that Sorimachi et al. do not enable the claimed invention, comprising a single layer of tufted material (response, pages 8 – 9). However, the claim uses comprising language and does not exclude additional layers from being required to produce the claimed invention. Therefore, the claimed invention is enabled by the prior art.

Additionally, the applicant argues that Sorimachi et al. fails to teach discontinuities with a linear orientation and longitudinal axis (response, pages 9 – 10). However, as set forth above, the limitation requiring linear orientation defining a longitudinal direction is not considered to limit the shape or size of the tuft and does not exclude round discontinuities. Further, with regards to the tuft being the same feature as the deformation, needle punching would not produce a flat even surface on the bottom surface which has been needle punched. Thus, the composite when viewed from the bottom will produce a discontinuity and when viewed from the top a tuft, which qualifies as the deformation. Also, the tuft is not excluded from defining both the deformation and discontinuity.

Finally, as set forth above, the limitation describing the linear orientation and longitudinal axis are not sufficient to exclude the shape of the discontinuity or tuft from being a circular shape. Therefore, the rejections based on Sorimachi et al. are maintained.

17. The applicant argues that Hansson does not enable the claimed subject matter, because Hansson does not teach a single layer fabric (response, pages 12 – 13). However, Hansson is not required to teach a single layer fabric because the claim is not limited to a single layer fabric. Therefore, the two layer structure disclosed by Hansson enables the claimed material even though Hansson teaches two layers.

The applicant also argues that Hansson fails to teach a deformation comprising a plurality of tufted fibers, since Hansson teaches multiple crests (response, page 13). It is noted that the applicant's tufted fibers are defined as fibers that extend upwards from the surface of the fabric by embossing or shaping the fabric. Hansson discloses that the crested layer comprises a nonwoven fabric, which is embossed or shaped to form crests. Thus, the crests of Hansson would be formed of a plurality of fibers that have been shaped to extend upwards from the surface of the fabric. Therefore, the crests include tufted fibers as defined by the applicant. Thus, the rejections based on Hansson are maintained.

The applicant argues that the Office Action does not point out the discrete regions of the Hansson composite comprising a linear orientation and longitudinal axis. As shown in the figure, the rows of crests and valleys which have the applicant's claimed linear orientation and fibers which have been reoriented to extend upwards. Further, the applicant argues that Hansson is a casing sheet and not an absorbent core. However, Hansson teaches that the casing sheet can be attached to an absorbent core material. The claim itself doesn't require that the fabric taught by Hansson is the absorbent layer, but that it is part of an absorbent core. Thus, the rejection is maintained.

18. The applicant argues that the rejection of claims 7 and 14 over Soramachi et al. is not sufficient since Soramachi et al. fails to teach all the features of claim 1 (response, pages 9 – 10). As set forth above, Sormachi et al. does teach the claimed features. Therefore, the rejections are maintained.

19. Further, the applicant argues that it would not have been obvious over Hansson to choose other known types or shapes of fibers to make the claimed fibrous article (response, pages 14 – 15). However, as supported by *Leshin*, it is within the general skill level of the art to choose materials based on the suitability for the intended use. In other words, one can choose from known materials, which in this case would include, different types or shapes of fibers, based on the suitability for the intended use. Both the claimed structure is known, as shown by Hansson, and bicomponent and non-round fibers are also known and readily available in the art. Thus, *In re Leshin* is applicable to presently claimed situation. Without a

Art Unit: 1771

showing that the use of different types of fibers would produce an unexpected result the rejection is maintained.

***Allowable Subject Matter***

20. Claims 11 – 16 are allowed.
21. The following is an examiner’s statement of reasons for allowance:
22. The prior art fails to teach or fairly suggest a web comprising a first and second precursor web, wherein the web has a first side comprising the second precursor web and a plurality of discrete tufts comprising fibers integral with but extending from the first precursor web and fibers neither integral with nor extending from the first precursor web. The prior art does not teach that the tufts can be produced with fibers that are not integral with or extending from the first precursor fabric.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

***Conclusion***

23. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 1771

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jlb  
July 9, 2007



Jenna Befumo  
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PRIMARY EXAMINER